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Child Abuse and Neglect State Statutes Series

Compendium of Laws

Child Witness to Domestic Violence



U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES
Administration for Children and Families
Administration on Children, Youth and Families
Children's Bureau

2002

This publication is one of the series **Child Abuse and Neglect State Statutes Series: Compendium of Laws**, which is produced by the National Clearinghouse on Child Abuse and Neglect Information. The Clearinghouse is a service of the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services.

The **Compendium of Laws** presents citations and text of State laws on different topics related to child maltreatment reporting laws, central registries, permanency planning and domestic violence. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as in agency regulations, case law, and informal practices and procedures. Readers interested in interpretation of specific statutory provisions within an individual jurisdiction should consult with professionals within the State familiar with the statutes' implementation.

There is a growing awareness that child maltreatment and domestic violence often co-exist in families. The publications included in the **Compendium of Laws: Domestic Violence** focus on how States have made provision in their statutes for recognizing and protecting children who are the collateral victims of domestic violence.

Electronic copies of this publication may be downloaded from the Clearinghouse Web site, located on the Internet at the URL listed below. To purchase print copies of this publication or for more information about the **Child Abuse and Neglect State Statutes Series**, contact the Clearinghouse at:

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We welcome your comments and suggestions about this publication.

Child Witnesses to Domestic Violence¹

Throughout the previous two decades, the co-occurrence of child maltreatment and domestic violence has been consistently identified as a significant social problem affecting children and families across the country. Recent research reveals that in households where women are abused, a substantial portion of their children are also victims of physical, sexual, and emotional abuse.² Studies also indicate that the majority of children from violent families, who are not themselves maltreated, either see or hear the abusive behavior directed towards the victim. The witnessing of such abuse may be auditory, visual, or inferred, in which the child observes the terrifying aftermath of bruises, cuts, and broken bones.³ During the past two decades, the potential harmful short and long-term consequences to children who witness domestic violence have been well documented.⁴ Research shows that these children may suffer severe emotional and developmental difficulties similar to those suffered by children who are the direct victims of child abuse, neglect, and sexual abuse.⁵

Although for years, many have considered domestic violence acts committed in the presence of a child a form of child maltreatment, it has only been recently that this issue has prompted nationwide interest in the need for special legal mechanisms for the care and protection of these children. Consequently, though not explicitly protecting children exposed to domestic violence, some States currently use child endangerment statutes to permit prosecution of batterers who commit abusive behaviors in the presence of a child.⁶ Approximately⁷ 19⁸ States, however, are now specifically identifying, in their legislation, children who witness acts of domestic violence as a class of persons in need of legal protection.⁹

The majority of these States provide enhanced criminal penalties for the commission of domestic violence offenses in the presence of a child. For example, in Idaho, the maximum penalties are doubled where the domestic violence acts, for which the person is convicted, are witnessed by a child. Utah's statute makes it a separate crime to commit an act of domestic violence in the presence of a child. A few other States, including Alaska, Arizona, and Ohio, consider such conduct an aggravating factor for courts to consider in sentencing. Moreover, Indiana requires supervised visitation for such behavior. Other States mandate counseling for child witnesses,

¹ The State Statutes contain excerpts from specific sections of each State's code. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as in agency regulations, case law, and informal practices and procedures.

² S. K. Beeman, A. K. Hagemeister & J. L. Edleson, *Child Protection and Battered Women's Services: From Conflict to Collaboration*, 4 Child Maltreatment 116 (1999); S. Schechter & J. L. Edelson, *Domestic Violence and Children: Creating a Public Response*. Open Society Institute, Center on Crime, Communities, and Culture (2000).

³ J. R. Kolbo, E. H. Blakely & D. Engleman, *Children Who Witness Domestic Violence: A Review of Empirical Literature*, 11 J. of Interpersonal Violence 281 (1996).

⁴ S. Schechter & J. L. Edleson, *Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice*. National Council of Juvenile and Family Court Judges (1999).

⁵ B. M. Groves, *Mental Health Services for Children Who Witness Domestic Violence*, 9 Future of Children 122 (1999); D. E. Logan & S. A. Graham-Bermann, *Emotional Expression in Children Exposed to Family Violence*, 1 J. of Emotional Abuse 39 (1999).

⁶ See *Batterers Charged with Mental Suffering of Child Witnesses*, 9 Update No. 3, Nat'l Ctr. for Prosecution of Child Abuse (1996).

⁷ The word *approximately* is used throughout the State Statutes Series to stress the fact that statutes are constantly being revised and updated.

⁸ This product includes both criminal and civil State statutes.

⁹ Most of these statutes are not located in the State code sections that address child abuse and neglect issues.

allow courts to find a child witness in need of aid, and presume that a child witness may have sustained physical injury for purposes of restitution.

Although there is great variation across States as to the particular requirements imposed by this legislation, these statutes share common elements. The statutes generally define which particular children are protected under the legislation, the meaning of "in the presence of a child," those actions that constitute domestic violence¹⁰, and whether one witnessing incident is sufficient or exposure to repeated incidents is required.

Within these jurisdictions, statutory provisions identify which particular children who witness abusive behavior are protected. The majority of States require that a special relationship exist between the child witness and the perpetrator and/or victim of domestic violence. For example, many jurisdictions require that the child be a minor child of the perpetrator or victim or that the child is a family/household member of the perpetrator or victim. California's¹¹ provision includes a broader class of eligible children. This provision reads that the perpetrator must be a member of the household of a minor child or of the victim, or the perpetrator is a marital or blood relative of the minor or the victim, or the perpetrator or the victim is the natural parent, adoptive parent, stepparent, or foster parent of the minor. Conversely, Indiana requires that the child can only be that of the noncustodial parent. In Georgia, *any person* can be charged with cruelty to a child in the second degree if the child witnesses a forcible felony, battery, or family violence battery. A few jurisdictions do not explicitly define child, but may elsewhere in their codes for the purposes of this topic. Several States also limit the age range of children covered under their statutes.

Another important element of child witnesses to domestic violence legislation is how States define "in the presence of a child." The majority of jurisdictions require that the child be physically present or that the perpetrator have knowledge that the child is present and may see or hear the domestic violence conduct. Ohio broadens the majority's definition by mandating that the perpetrator commit the offense within thirty feet of or within the same residential unit as a child, regardless of whether the offender has this knowledge and whether the child actually views the commission of the offense. A handful of States fail to clearly define the term.

In addition, under the majority of the statutes, a single act of domestic violence committed in the presence of a child appears to be sufficient. Minnesota, however, requires that a child witness repeated incidents of domestic violence. Additionally, Alaska¹² mandates repeated exposure when the prohibitive abusive acts involve violations of certain enumerated sections of the criminal code, such as reckless endangerment and stalking.

While only 19 States explicitly protect children exposed to domestic violence, it is anticipated that additional States will pass similar legislation in response to the increased recognition of the potential harmful consequences to these children.

¹⁰ See Dep't of Health and Human Services, Child Abuse and Neglect State Statutes Elements: Definitions of Domestic Violence (2002).

¹¹ Provides for enhanced penalties

¹² Allows a court to find a child to be in need of aid

Please note that within the State code sections identified on the following pages, the relevant wording has been italicized.

**Legislation Regarding Child Witnesses
to Domestic Violence**

(Current through April 30, 2002)

Alabama	Not addressed in statutes reviewed
Alaska	Alaska Stat. § 47.10.011 (Lexis, WESTLAW through 2000 3 rd Spec. Sess.) Alaska Stat. § 12.55.155 (Lexis, WESTLAW through 2000 3 rd Spec. Sess.)
Arizona	Ariz. Rev. Stat. Ann. § 13-702 (West, WESTLAW through 2000 2 nd Reg. Sess & 5 th Spec. Sess.)
Arkansas	Ark. Code Ann. § 5-4-701(2) (WESTLAW through 2001 Reg. Sess.) Ark. Code Ann. § 5-4-702 (WESTLAW through 2001 Reg. Sess.)
California	Cal. Penal Code § 1170.76 (West, WESTLAW through 1999-2000 Reg. Sess. & 1 st Ex. Sess. & 11/7/00) Cal. Gov't Code § 13960 (West, WESTLAW through 2002 Reg. Sess. & 3 rd Ex. Sess. & 3/5/02)
Colorado	Not addressed in statutes reviewed
Connecticut	Not addressed in statutes reviewed
Delaware	Del. Code Ann. tit. 11, § 1102 (WESTLAW through 2001 Reg. Sess.)
District of Columbia	Not addressed in statutes reviewed
Florida	Fla. Stat. Ann. § 921.0024 (West, WESTLAW through Fla. 2002 Legis. Serv., Ch. 2002-212)
Georgia	Ga. Code Ann. § 16-5-70 (WESTLAW through 2000 Gen. Assem.)
Hawaii	Haw. Rev. Stat. Ann. § 706-606.4 (Lexis, WESTLAW through 2000 Spec. Sess.)

Idaho	Idaho Code § 18-918 (Lexis, WESTLAW through 2000 2 nd Reg. Sess.)
Illinois	720 Ill. Comp. Stat. Ann. 5/12-3.2 (West, WESTLAW through 2001 Reg. Sess.)
Indiana	Ind. Code Ann. § 31-14-14-5 (West, WESTLAW through Ind. 2002 Legis. Serv., P.L. 133-2002)
Iowa	Not addressed in statutes reviewed
Kansas	Not addressed in statutes reviewed
Kentucky	Not addressed in statutes reviewed
Louisiana	Not addressed in statutes reviewed
Maine	Not addressed in statutes reviewed
Maryland	Not addressed in statutes reviewed
Massachusetts	Not addressed in statutes reviewed
Michigan	Not addressed in statutes reviewed
Minnesota	Minn. Stat. Ann. § 626.5552 (West, WESTLAW through 2000 Reg. Sess.)
Mississippi	Miss. Code Ann. § 97-3-7(3)-(4) (West, WESTLAW through Miss. 2002 Legis. Serv., Ch. 353)
Missouri	Not addressed in statutes reviewed
Montana	Mont. Code Ann. § 45-5-206(1), (2), (3)(a) (WESTLAW through 2001 Reg. Sess.)
Nebraska	Not addressed in statutes reviewed
Nevada	Not addressed in statutes reviewed
New Hampshire	Not addressed in statutes reviewed
New Jersey	Not addressed in statutes reviewed
New Mexico	Not addressed in statutes reviewed

New York	Not addressed in statutes reviewed
North Carolina	Not addressed in statutes reviewed
North Dakota	Not addressed in statutes reviewed
Ohio	Ohio Rev. Code Ann. § 2929.01(MM), (NN) (West, WESTLAW through Ohio 2002 Legis. Serv., File 121) Ohio Rev. Code Ann. § 2929.12 (West, WESTLAW through Ohio 2002 Legis. Serv., File 121) Ohio Rev. Code Ann. § 2929.17 (West, WESTLAW through 2000 Files 124, 128, 129, 131 to 133, & 135 to 248) Ohio Rev. Code Ann. § 2929.22 (West, WESTLAW through 2000 Files 124, 128, 129, 131 to 133, & 135 to 248)
Oklahoma	Okla. Stat. Ann. tit. 21, § 644 (West, WESTLAW through 2000 1 st Ex. Sess.)
Oregon Sess.)	Or. Rev. Stat. § 163.160 (WESTLAW through 1999 Reg.
Pennsylvania	Not addressed in statutes reviewed
Rhode Island	Not addressed in statutes reviewed
South Carolina	Not addressed in statutes reviewed
South Dakota	Not addressed in statutes reviewed
Tennessee	Not addressed in statutes reviewed
Texas	Not addressed in statutes reviewed
Utah	Utah Code § 76-5-109.1(1), (2) (Lexis, WESTLAW through Utah 2002 Legis. Serv., Ch. 81)
Vermont	Not addressed in statutes reviewed
Virginia	Not addressed in statutes reviewed
Washington	Wash. Rev. Code Ann. § 9.94A.535 (West, WESTLAW through Wash. 2002 Legis. Serv., Ch. 169)
West Virginia	Not addressed in statutes reviewed
Wisconsin	Not addressed in statutes reviewed

Wyoming

Not addressed in statutes reviewed

**Summary of Legislation Regarding
Child Witnesses to Domestic Violence**
(Current through April 30, 2002)

ALASKA

Alaska Stat. § 47.10.011 (Lexis, WESTLAW through 2000 3rd Spec. Sess.)

The court may find a child to be a child in need of aid if it finds by a preponderance of the evidence that the child has been subjected to any of the following:

- A parent or guardian has abandoned the child as described in AS 47.10.013, and the other parent is absent or has committed conduct or created conditions that cause the child to be a child in need of aid under this chapter;
- A parent, guardian, or custodian is incarcerated, the other parent is absent or has committed conduct or created conditions that cause the child to be a child in need of aid under this chapter, and the incarcerated parent has not made adequate arrangements for the child;
- A custodian with whom the child has been left is unwilling or unable to provide care, supervision, or support for the child, and the whereabouts of the parent or guardian is unknown;
- The child is in need of medical treatment to cure, alleviate, or prevent substantial physical harm or is in need of treatment for mental injury and the child's parent, guardian, or custodian has knowingly failed to provide the treatment;
- The child is habitually absent from home or refuses to accept available care and the child's conduct places the child at substantial risk of physical or mental injury;
- The child has suffered substantial physical harm, or there is a substantial risk that the child will suffer substantial physical harm, as a result of conduct by or conditions created by the child's parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to supervise the child adequately;

The child has suffered sexual abuse, or there is a substantial risk that the child will suffer sexual abuse, as a result of conduct by or conditions created by the child's parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to adequately supervise the child; if a parent, guardian, or custodian has actual notice that a person has been convicted of a sex offense against a minor within the past 15 years, is registered or required to register as a sex offender under AS 12.63, or is under investigation for a sex offense against a minor, and the parent, guardian, or custodian subsequently allows a child to be left with that person, this conduct constitutes prima facie evidence that the child is at substantial risk of being sexually abused;

- *Conduct by or conditions created by the parent, guardian, or custodian have*
 - *Resulted in mental injury to the child; or*
 - *Placed the child at substantial risk of mental injury as a result of*

- (i) A pattern of rejecting, terrorizing, ignoring, isolating, or corrupting behavior that would, if continued, result in mental injury; or
 - (ii) *Exposure to conduct by a household member, as defined in AS 18.66.990, against another household member that is a crime under AS 11.41.100 -- 11.41.220¹³, 11.41.230(a)(1) or (2)¹⁴, or 11.41.410 -- 11.41.432¹⁵, an offense under a law or ordinance of another jurisdiction having elements similar to a crime under AS 11.41.100 -- 11.41.220, 11.41.230(a)(1) or (2), or 11.41.410 -- 11.41.432, an attempt to commit an offense that is a crime under AS 11.41.100 -- 11.41.220 or 11.41.410 -- 11.41.432, or an attempt to commit an offense under a law or ordinance of another jurisdiction having elements similar to a crime under AS 11.41.100 -- 11.41.220 or 11.41.410 -- 11.41.432; or*
 - (iii) *Repeated exposure to conduct by a household member, as defined in AS 18.66.990, against another household member that is a crime under AS 11.41.230(a)(3) or 11.41.250 -- 11.41.270¹⁶ or an offense under a law or ordinance of another jurisdiction having elements similar to a crime under AS 11.41.230(a)(3) or 11.41.250 -- 11.41.270;*
- Conduct by or conditions created by the parent, guardian, or custodian have subjected the child or another child in the same household to neglect;
 - The parent, guardian, or custodian's ability to parent has been substantially impaired by the addictive or habitual use of an intoxicant, and the addictive or habitual use of the intoxicant has resulted in a substantial risk of harm to the child; if a court has previously found that a child is a child in need of aid under this paragraph, the resumption of use of an intoxicant by a parent, guardian, or custodian within one year after rehabilitation is prima facie evidence that the ability to parent is substantially impaired and the addictive or habitual use of the intoxicant has resulted in a substantial risk of harm to the child as described in this paragraph;
 - The parent, guardian, or custodian has a mental illness, serious emotional disturbance, or mental deficiency of a nature and duration that places the child at substantial risk of physical harm or mental injury;
 - The child has committed an illegal act as a result of pressure, guidance, or approval from the child's parent, guardian, or custodian.

Alaska Stat. § 12.55.155 (Lexis, WESTLAW through 2000 3rd Spec. Sess.)

If a defendant is convicted of an offense and is subject to sentencing under AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(4), or (i) and

- The presumptive term is four years or less, the court may decrease the presumptive term by an amount as great as the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation;

¹³ Murder in the 1st & 2nd degrees; Defenses to murder; Manslaughter; Criminally neglect homicide; Multiple deaths; Assault in the 1st, 2nd & 3rd degrees

¹⁴ Assault in the 4th degree

¹⁵ Sexual assault in the 1st, 2nd, 3rd & 4th degrees; Defenses

¹⁶ Reckless endangerment; Stalking in the 1st & 2nd degrees

- The presumptive term of imprisonment is more than four years, the court may decrease the presumptive term by an amount as great as 50 percent of the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation.

Sentence increments and decrements under this section shall be based on the totality of the aggravating and mitigating factors set out below.

The following factors shall be considered by the sentencing court and may aggravate the presumptive terms set out in AS 12.55.125:

- A person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct;
- The defendant's conduct during the commission of the offense manifested deliberate cruelty to another person;
- The defendant was the leader of a group of three or more persons who participated in the offense;
- The defendant employed a dangerous instrument in furtherance of the offense;
- The defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance;
- The defendant's conduct created a risk of imminent physical injury to three or more persons, other than accomplices;
- A prior felony conviction considered for the purpose of invoking the presumptive terms of this chapter was of a more serious class of offense than the present offense;
- The defendant's prior criminal history includes conduct involving aggravated or repeated instances of assaultive behavior;
- The defendant knew that the offense involved more than one victim;
- The conduct constituting the offense was among the most serious conduct included in the definition of the offense;
- The defendant committed the offense pursuant to an agreement that the defendant either pay or be paid for the commission of the offense, and the pecuniary incentive was beyond that inherent in the offense itself;
- The defendant was on release under AS 12.30.020 or 12.30.040 for another felony charge or conviction or for a misdemeanor charge or conviction having assault as a necessary element;
- The defendant knowingly directed the conduct constituting the offense at an active officer of the court or at an active or former judicial officer, prosecuting attorney, law enforcement officer, correctional employee, fire fighter, emergency medical technician, paramedic, ambulance attendant, or other emergency responder during or because of the exercise of official duties;
- The defendant was a member of an organized group of five or more persons, and the offense was committed to further the criminal objectives of the group;
- The defendant has three or more prior felony convictions;

- The defendant's criminal conduct was designed to obtain substantial pecuniary gain and the risk of prosecution and punishment for the conduct is slight;
- The offense was one of a continuing series of criminal offenses committed in furtherance of illegal business activities from which the defendant derives a major portion of the defendant's income;
- *The offense was a felony:*
 - (A) *Specified in AS 11.41¹⁷ and was committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the defendant;*
 - (B) *Specified in AS 11.41.410 -- 11.41.458¹⁸ and the defendant has engaged in the same or other conduct prohibited by a provision of AS 11.41.410 -- 11.41.460¹⁹ involving the same or another victim; or*
 - (C) *Specified in AS 11.41 that is a crime involving domestic violence and was committed in the physical presence or hearing of a child under 16 years of age who was, at the time of the offense, living within the residence of the victim, the residence of the perpetrator, or the residence where the crime involving domestic violence occurred;*
- The defendant's prior criminal history includes an adjudication as a delinquent for conduct that would have been a felony if committed by an adult;
- The defendant was on furlough under AS 33.30 or on parole or probation for another felony charge or conviction that would be considered a prior felony conviction under AS 12.55.145(a)(1)(B);
- The defendant has a criminal history of repeated instances of conduct violative of criminal laws, whether punishable as felonies or misdemeanors, similar in nature to the offense for which the defendant is being sentenced under this section;
- The defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin;
- The defendant is convicted of an offense specified in AS 11.71 and
 - (A) The offense involved the delivery of a controlled substance under circumstances manifesting an intent to distribute the substance as part of a commercial enterprise; or
 - (B) At the time of the conduct resulting in the conviction, the defendant was caring for or assisting in the care of a child under 10 years of age;
- The defendant is convicted of an offense specified in AS 11.71 and the offense involved the transportation of controlled substances into the state;
- The defendant is convicted of an offense specified in AS 11.71 and the offense involved large quantities of a controlled substance;
- The defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance that had been adulterated with a toxic substance;
- The defendant, being 18 years of age or older,
 - (A) Is legally accountable under AS 11.16.110(2) for the conduct of a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant; or

¹⁷ Offenses against the person

¹⁸ Sexual assault in the 1st, 2nd, 3rd & 4th degrees; Defenses; Sexual abuse of a minor in the 1st, 2nd, 3rd & 4th degrees; Spousal relationship no defense; Incest; Unlawful exploitation of a minor; Indecent exposure in the 1st degree

¹⁹ Also includes Indecent exposure in the 2nd degree

- (B) Is aided or abetted in planning or committing the offense by a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant;
- The victim of the offense is a person who provided testimony or evidence related to a prior offense committed by the defendant;
- The defendant committed the offense for the benefit of, at the direction of, or in association with a criminal street gang.

The following factors shall be considered by the sentencing court and may mitigate the presumptive terms set out in AS 12.55.125:

- The offense was principally accomplished by another person, and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim;
- The defendant, although an accomplice, played only a minor role in the commission of the offense;
- The defendant committed the offense under some degree of duress, coercion, threat, or compulsion insufficient to constitute a complete defense, but which significantly affected the defendant's conduct;
- The conduct of a youthful defendant was substantially influenced by another person more mature than the defendant;
- The conduct of an aged defendant was substantially a product of physical or mental infirmities resulting from the defendant's age;
- In a conviction for assault under AS 11.41.200 -- 11.41.220, the defendant acted with serious provocation from the victim;
- Except in the case of a crime defined by AS 11.41.410 -- 11.41.470, the victim provoked the crime to a significant degree;
- The conduct constituting the offense was among the least serious conduct included in the definition of the offense;
- Before the defendant knew that the criminal conduct had been discovered, the defendant fully compensated or made a good faith effort to fully compensate the victim of the defendant's criminal conduct for any damage or injury sustained;
- The defendant was motivated to commit the offense solely by an overwhelming compulsion to provide for emergency necessities for the defendant's immediate family;
- The defendant assisted authorities to detect, apprehend, or prosecute other persons who committed an offense;
- The facts surrounding the commission of the offense and any previous offenses by the defendant establish that the harm caused by the defendant's conduct is consistently minor and inconsistent with the imposition of a substantial period of imprisonment;
- The defendant is convicted of an offense specified in AS 11.71 and the offense involved small quantities of a controlled substance;
- The defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance, other than a schedule IA controlled substance, to a personal acquaintance who is 19 years of age or older for no profit;
- The defendant is convicted of an offense specified in AS 11.71 and the offense involved the possession of a small amount of a controlled substance for personal use in the defendant's home;

- In a conviction for assault or attempted assault or for homicide or attempted homicide, the defendant acted in response to domestic violence perpetrated by the victim against the defendant and the domestic violence consisted of aggravated or repeated instances of assaultive behavior.

If a factor in aggravation is a necessary element of the present offense, or requires the imposition of a presumptive term under AS 12.55.125(c)(2), that factor may not be used to aggravate the presumptive term. If a factor in mitigation is raised at trial as a defense reducing the offense charged to a lesser included offense, that factor may not be used to mitigate the presumptive term.

If the state seeks to establish a factor in aggravation at sentencing or if the defendant seeks to establish a factor in mitigation at sentencing, written notice must be served on the opposing party and filed with the court not later than 10 days before the date set for imposition of sentence. Factors in aggravation and factors in mitigation must be established by clear and convincing evidence before the court sitting without a jury. All findings must be set out with specificity.

Voluntary alcohol or other drug intoxication or chronic alcoholism or other drug addiction may not be considered an aggravating or mitigating factor.

"Serious provocation" has the meaning given in AS 11.41.115(f).

ARIZONA

Ariz. Rev. Stat. Ann. § 13-702 (West, WESTLAW through 2000 2nd Reg. Sess & 5th Spec. Sess.)

Sentences provided in § 13-701 for a first conviction of a felony, except those felonies involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury upon another or if a specific sentence is otherwise provided, may be increased or reduced by the court within the ranges set by this subsection. Any reduction or increase shall be based on the aggravating and mitigating circumstances contained below and shall be within the following ranges:

	Minimum	Maximum
▪ For a class 2 felony	4 years	10 years
▪ For a class 3 felony	2.5 years	7 years
▪ For a class 4 felony	1.5 years	3 years
▪ For a class 5 felony	9 months	2 years
▪ For a class 6 felony	6 months	1.5 years

The upper or lower term imposed pursuant to § 13-604, 13-604.01, 13-604.02, 13-702.01 or 13-710 or subsection A of this section may be imposed only if the circumstances alleged to be in aggravation or mitigation of the crime are found to be true by the trial judge upon any evidence or information introduced or submitted to the court before sentencing or any evidence previously heard by the judge at the trial, and factual findings and reasons in support of such findings are set forth on the record at the time of sentencing.

For the purpose of determining the sentence, the court shall consider the following aggravating circumstances:

- Infliction or threatened infliction of serious physical injury, except if this circumstance is an essential element of the offense of conviction or has been utilized to enhance the range of punishment under § 13-604;
- Use, threatened use or possession of a deadly weapon or dangerous instrument during the commission of the crime, except if this circumstance is an essential element of the offense of conviction or has been utilized to enhance the range of punishment under § 13-604;
- If the offense involves the taking of or damage to property, the value of the property so taken or damaged;
- Presence of an accomplice;
- Especially heinous, cruel or depraved manner in which the offense was committed;
- The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value;
- The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value;
- At the time of the commission of the offense, the defendant was a public servant and the offense involved conduct directly related to the defendant's office or employment;
- The physical, emotional and financial harm caused to the victim or, if the victim has died as a result of the conduct of the defendant, the emotional and financial harm caused to the victim's immediate family;
- During the course of the commission of the offense, the death of an unborn child at any stage of its development occurred;
- The defendant was previously convicted of a felony within the ten years immediately preceding the date of the offense. A conviction outside the jurisdiction of this state for an offense which if committed in this state would be punishable as a felony is a felony conviction for the purposes of this paragraph;
- The defendant was wearing body armor as defined in § 13-3116;
- If the victim of the offense is sixty-five or more years of age or is a handicapped person as defined by § 38-492;
- Evidence that the defendant committed the crime out of malice toward a victim because of the victim's identity in a group listed in § 41-1750, subsection A, paragraph 3 or because of the defendant's perception of the victim's identity in a group listed in § 41-1750, subsection A, paragraph 3;
- The defendant was convicted of a violation of § 13-1102, § 13-1103, § 13-1104, subsection A, paragraph 3 or § 13-1204, subsection A, paragraph 1 or 2 arising from an act that was committed while driving a motor vehicle and the defendant's alcohol concentration at the time of committing the offense was 0.18 or more. For the purposes of this paragraph, "alcohol concentration" has the same meaning prescribed in § 28-101;
- Lying in wait for the victim or ambushing the victim during the commission of any felony;

- *The offense was committed in the presence of a child and any of the circumstances exist that are set forth in § 13-3601, subsection A;*²⁰
- Any other factor that the court deems appropriate to the ends of justice.

For the purpose of determining the sentence, the court shall consider the following mitigating circumstances:

- The age of the defendant;
- The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution;
- The defendant was under unusual or substantial duress, although not such as to constitute a defense to prosecution;
- The degree of the defendant's participation in the crime was minor, although not so minor as to constitute a defense to prosecution;
- Any other factor that the court deems appropriate to the ends of justice.

In determining what sentence to impose, the court shall take into account the amount of aggravating circumstances and whether the amount of mitigating circumstances is sufficiently substantial to call for the lesser term. If the court finds aggravating circumstances and does not find any mitigating circumstances, the court shall impose an aggravated sentence.

The court in imposing sentence shall consider the evidence and opinions presented by the victim or the victim's immediate family at any aggravation or mitigation proceeding or in the presentence report.

Nothing in this section affects any provision of law that imposes the death penalty, that expressly provides for imprisonment for life or that authorizes or restricts the granting of probation and suspending the execution of sentence.

Notwithstanding any other provision of this title, if a person is convicted of any class 6 felony not involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument and if the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that it would be unduly harsh to sentence the defendant for a felony, the court may enter judgment of conviction for a class 1 misdemeanor and make disposition accordingly or may place the defendant on probation in accordance with chapter 9 of this title and refrain from designating the offense as a felony or misdemeanor until the probation is terminated. The offense shall be treated as a felony for all purposes until such time as the court may actually enter an order designating the offense a misdemeanor. This subsection does not apply to any person who stands convicted of a class 6 felony and who has previously been convicted of two or more felonies. If a crime or public offense is punishable in the discretion of

²⁰ Defines domestic violence

the court by a sentence as a class 6 felony or a class 1 misdemeanor, the offense shall be deemed a misdemeanor if the prosecuting attorney:

- Files an information in superior court designating the offense as a misdemeanor;
- Files a complaint in justice court or municipal court designating the offense as a misdemeanor within the jurisdiction of the respective court;
- Files a complaint, with the consent of the defendant, before or during the preliminary hearing amending the complaint to charge a misdemeanor.

ARKANSAS

Ark. Code Ann. § 5-4-7-01(2) (WESTLAW through 2001 Reg. Sess.)

“In the presence of a child” means in the physical presence of a child or knowing or having reason to know that a child is present and may see or hear an act of assault, battery, domestic battery, or assault on a family member or household member.

Ark. Code 5-4-702 (WESTLAW through 2001 Reg. Sess.)

Any person who commits a felony offense involving assault, battery, domestic battery, or assault on a family member or household member, as provided in §§ 5-13-201 et.seq., or §§ 5-26-303 through 5-26-311, *may be subject to an enhanced sentence of an additional term of imprisonment of not less than one year and not greater than 10 years if the offense is committed in the presence of a child.*

- To seek the enhanced penalties established in this section, a prosecuting attorney shall notify the defendant in writing that the defendant is subject to the enhanced penalty.
- If the defendant is charged by information or indictment, the prosecuting attorney may include the written notice in the information or indictment.
- *The enhanced portion of the sentence shall be consecutive to any other sentence imposed.*
- *Any person convicted under this section shall not be eligible for early release on parole for the enhanced portion of the sentence.*

CALIFORNIA

Cal. Penal Code § 1170.76 (West, WESTLAW through 1999-2000 Reg. Sess. & 1st Ex. Sess. & 11/7/00)

The fact that a defendant who commits or attempts to commit a violation of Section 243.4²¹, 245²², 273.5²³, or 273.55²⁴, is or has been a member of the household of a minor or of the victim of the offense, or the defendant is a marital or blood relative of the minor or the victim, or the

²¹ Sexual battery

²² Assault with deadly weapon or force likely to produce great bodily injury

²³ Willful infliction of corporal injury

²⁴ Repealed

defendant or the victim is the natural parent, adoptive parent, stepparent, or foster parent of the minor, and the *offense contemporaneously occurred in the presence of, or was witnessed by, the minor* shall be considered a circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.

Cal. Gov't Code § 13960 (West, WESTLAW through 2002 Reg. Sess. & 3rd Ex. Sess. & 3/5/02)

"Victim" means a resident of the State of California, a member of the military stationed in California, or a family member living with a member of the military stationed in California who sustains injury or death as a direct result of a crime.

"Derivative victim" means a resident of California, or resident of another state, who is one of the following:

- At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim;
- At the time of the crime was living in the household of the victim;
- A person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed above;
- Is another family member of the victim, including the victim's fiancé or fiancée, and witnessed the crime;
- Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.

"Injury" includes physical or emotional injury, or both. However, this article does not apply to emotional injury unless that injury is incurred by a victim who also sustains physical injury or threat of physical injury. For purposes of this article, a victim of a crime committed in violation of Section 261²⁵, 262²⁶, 271²⁷, 273a²⁸, 273d²⁹, 278³⁰, 278.5³¹, 285³², 286³³, 288³⁴, 288a³⁵, 288.5³⁶, or 289³⁷, or subdivision (b) or (c) of Section 311.4³⁸, of the Penal Code, who sustains emotional injury is presumed to have sustained physical injury. For purposes of this article, a victim of a crime committed in violation of Section 270³⁹ of the Penal Code, as a result of conduct other than a failure to pay child support, who sustains emotional injury is presumed to have sustained physical injury if criminal charges were filed. For purposes of this article, a

²⁵ Rape

²⁶ Rape of a spouse

²⁷ Desertion of child under 14 with intent

²⁸ Willful harm or injury to child

²⁹ Corporal punishment or injury of child

³⁰ Detainment or concealment of child from legal custodian

³¹ Deprivation of custody of child or right to visitation

³² Incest

³³ Sodomy

³⁴ Lewd or lascivious acts

³⁵ Oral copulation

³⁶ Continuous sexual abuse of a child

³⁷ Forcible acts of sexual penetration

³⁸ Employment or use of minor to perform prohibited acts

³⁹ Failure to provide, parent, punishment, effect of custody, evidence, applicability of section, artificial insemination, treatment by spiritual means

victim of a crime committed in violation of subdivision (d) of Section 261.5⁴⁰ of the Penal Code, who sustains emotional injury, is presumed to have sustained physical injury if felony charges were filed.

- It is the intent of the Legislature that in order for the presumption set forth above relating to a violation of Section 278 or 278.5 of the Penal Code to apply, the deprivation of custody as described in those sections shall have endured for not less than 30 days. For the purposes of this paragraph, the child, and not the nonoffending parent or other caretaker, shall be deemed the victim.
- *A child who has been the witness of a crime or crimes of domestic violence may be presumed by the board to have sustained physical injury.*

"Crime" means a crime or public offense that would constitute a misdemeanor or a felony if committed in California by a competent adult which results in injury to a resident of this state, including a crime or public offense, wherever it may take place, when the resident is temporarily absent from the state. "Crime" includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle which results in injury or death constitutes a crime for the purposes of this article, except that a crime shall include any of the following:

- Injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle;
- Injury or death caused by a driver in violation of Section 20001 of the Vehicle Code;
- Injury or death caused by a person who is under the influence of any alcoholic beverage or drug;
- Injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated;
- Injury or death caused by a person in violation of subdivision (c) of Section 192 or Section 192.5 of the Penal Code.

For the purpose of the limitations imposed by this article, a crime shall mean one act or series of related acts arising from the same course of conduct with the same perpetrator or perpetrators against a victim.

"Pecuniary loss" means the following expenses for which the victim or derivative victim has not been and will not be reimbursed from any other source:

- The amount of medical or medical-related expenses incurred by the victim, including inpatient psychological or psychiatric expenses, and including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime;
- The amount of outpatient psychiatric, psychological, or other mental health counseling related expenses which became necessary as a direct result of the crime. These

⁴⁰ Unlawful sexual intercourse with person under 18

counseling services may only be reimbursed if provided by any of the following individuals:

- (A) A person licensed as a physician who is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed a residency in psychiatry;
 - (B) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code;
 - (C) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code;
 - (D) A person licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code;
 - (E) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code;
 - (F) A person registered with the Board of Psychology who is providing services in a nonprofit community agency pursuant to subdivision (d) of Section 2909 of the Business and Professions Code;
 - (G) A person registered as a marriage and family therapist intern who is under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code;
 - (H) A person registered as an associate clinical social worker, as defined in Section 4996.18 of the Business and Professions Code, who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist;
 - (I) A person who qualifies as a psychology intern as described in Section 2911 of the Business and Professions Code who is under the supervision of a licensed mental health professional (psychiatrist, psychologist, social worker, or marriage and family therapist) in a university hospital or university medical school clinic or a person who has completed the qualifications described in Section 2911 of the Business and Professions Code who is pursuing a postdoctoral and training in a university or university medical school clinic under the supervision of a licensed mental health professional (psychiatrist, psychologist, social worker, or marriage and family therapist) for the purpose of achieving higher clinical competency;
- The loss of income that the victim or the loss of support that the derivative victim has incurred or will incur as a direct result of an injury or death.
 - Pecuniary loss also includes nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.
 - The amount of family psychiatric, psychological, or mental health counseling expenses necessary as a direct result of the crime for the successful treatment of the victim, provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime.

"Board" means the California Victim Compensation and Government Claims Board.

"Victim centers" means those centers as specified in Section 13835.2 of the Penal Code.

"Peer counselor" means a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling in consultation with a mental health practitioner licensed within the State of California.

DELAWARE

Del. Code Ann. tit. 11, § 1102 (WESTLAW through 2001 Reg. Sess.)

A person is guilty of endangering the welfare of a child when:

- Being a parent, guardian or other person who has assumed responsibility for the care or supervision of a child less than 18 years old the person:
 - Knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of the child; or
 - Intentionally does or fails to do any act, with the result that the child becomes a neglected child; or
- The person knowingly contributes to the delinquency of any child less than 18 years old by doing or failing to do any act with the result, alone or in conjunction with other acts or circumstances, that the child becomes a delinquent child; or
- The person knowingly encourages, aids, abets or conspires with the child to run away from the home of the child's parents, guardian or custodian; or the person knowingly and illegally harbors a child who has run away from home; or
- *The person commits any violent felony, or reckless endangering second degree, assault third degree, terroristic threatening, or unlawful imprisonment second degree against a victim, knowing that such felony or misdemeanor was witnessed by a child less than 18 years of age who is a member of the person's family or the victim's family.*
- The person commits the offense of Driving Under the Influence as set forth in § 4177 of Title 21, or the offense of Operating a Vessel or Boat Under the Influence as set forth in § 2302 of Title 23, and during the commission of the offense knowingly permits a child less than 18 years of age to be a passenger in or on such vehicle, vessel or boat.
- The person commits any offense set forth in Chapter 47 of Title 16⁴¹ in any dwelling, knowing that any child less than 18 years of age is present in the dwelling at the time.

Endangering the welfare of a child shall be punished as follows:

- When the death of a child occurs while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class E felony;
- When serious physical injury to a child occurs while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class G felony;
- When a child becomes the victim of a sexual offense as defined in § 761(d) of this title while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class G felony;

⁴¹ Uniform Controlled Substances Act

- In all other cases, endangering the welfare of a child is a class A misdemeanor.

For the purpose of imposing the penalties prescribed in the above paragraphs, it is not necessary to prove the person's state of mind or liability for causation with regard to the resulting death or physical injury of the child or sexual offense against the child, notwithstanding the provisions of §§ 251, 252, 261, 262, 263 or 264 of this title, or any other statutes to the contrary.

FLORIDA

Fla. Stat. Ann. § 921.0024 (West, WESTLAW through Fla. 2002 Legis. S erv., Ch. 2002-212)

The Criminal Punishment Code worksheet is used to compute the subtotal and total sentence points.

Sentencing multipliers:

- *Domestic violence in the presence of a child:* If the offender is convicted of the primary offense and the primary offense is a crime of domestic violence, as defined in § 741.28, which was committed in the presence of a child under 16 years of age who is a family household member as defined in § 741.28(2) with the victim or perpetrator, the subtotal sentence points are multiplied, at the discretion of the court, by 1.5.

GEORGIA

Ga. Code Ann. § 16-5-70 (WESTLAW through 2000 Gen. Assem.)

A parent, guardian, or other person supervising the welfare of or having immediate charge or custody of a child under the age of 18 commits the offense of cruelty to children in the first degree when such person willfully deprives the child of necessary sustenance to the extent that the child's health or well-being is jeopardized.

Any person commits the offense of cruelty to children in the first degree when such person maliciously causes a child under the age of 18 cruel or excessive physical or mental pain.

Any person commits the offense of cruelty to children in the second degree when:

- *Such person, who is the primary aggressor, intentionally allows a child under the age of 18 to witness the commission of a forcible felony, battery, or family violence battery; or*
- *Such person, who is the primary aggressor, having knowledge that a child under the age of 18 is present and sees or hears the act, commits a forcible felony, battery, or family violence battery.*

A person convicted of the offense of cruelty to children in the first degree as provided in this Code section shall be punished by imprisonment for not less than five nor more than 20 years.

A person convicted of the offense of cruelty to children in the second degree shall be punished as for a misdemeanor upon the first or second conviction. Upon conviction of a third or subsequent offense of cruelty to children in the second degree, the defendant shall be guilty of a felony and shall be sentenced to a fine not less than \$1,000.00 nor more than \$5,000.00 or imprisonment for not less than one year nor more than three years or shall be sentenced to both fine and imprisonment.

HAWAII

Haw. Rev. Stat. Ann. § 706-606.4 (Lexis, WESTLAW through 2000 Spec. Sess.)

In addition to the factors considered under section 706-606⁴², the court shall consider the following aggravating factors in determining the particular sentence to be imposed:

- *The defendant has been convicted of committing or attempting to commit an offense involving abuse of a family or household member;*
- *The defendant is or has been a family or household member of either a minor referred to below or the victim of the offense; and*
- *The offense contemporaneously occurred in the presence of a minor.*

"Family or household member" has the same meaning as defined in section 709-906.

"Offense" means a violation of section 707-710 (assault in the first degree), 707-711 (assault in the second degree), 707-730 (sexual assault in the first degree), 707-731 (sexual assault in the second degree), 707-732 (sexual assault in the third degree), or 709-906 (abuse of family and household members).

"*In the presence of a minor*" means in the actual physical presence of a child or knowing that a child is present and may hear or see the offense.

IDAHO

Idaho Code § 18-918 (Lexis, WESTLAW through 2000 2nd Reg. Sess.)

"Household member" means a person who is a spouse, former spouse, or a person who has a child in common regardless of whether they have been married or a person with whom a person is cohabiting, whether or not they have married or have held themselves out to be husband or wife.

"Traumatic injury" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by physical force.

⁴² Factors to be considered in imposing a sentence

Any household member who commits a battery, as defined in section 18- 903, Idaho Code, and willfully and unlawfully inflicts a traumatic injury upon any other household member is guilty of a felony.

A household member who commits an assault, as defined in section 18- 901, Idaho Code, against another household member which does not result in traumatic injury is guilty of a misdemeanor domestic assault.

A household member who commits a battery, as defined in section 18- 903, Idaho Code, against another household member which does not result in traumatic injury is guilty of a misdemeanor domestic battery.

A conviction of felony domestic battery is punishable by imprisonment in the state prison for a term not to exceed ten (10) years or by a fine not to exceed ten thousand dollars (\$10,000) or by both fine and imprisonment.

Upon a first conviction, the crime of misdemeanor domestic assault or battery is punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in a county jail not to exceed six (6) months, or both. Upon a second conviction, within ten (10) years of the first conviction, the person so convicted shall be punished by imprisonment in the county jail for a term not to exceed one (1) year or by a fine not exceeding two thousand dollars (\$2,000) or by both fine and imprisonment. Upon a third or subsequent conviction, within fifteen (15) years of the first conviction, the person so convicted shall be punished by imprisonment in the state prison for a term not to exceed five (5) years or by a fine not to exceed five thousand dollars (\$5,000) or by both fine and imprisonment.

- *The maximum penalties provided in this section shall be doubled where the act of domestic assault or battery for which the person is convicted or pleads guilty took place in the presence of a child. For purposes of this section, "in the presence of a child" means in the physical presence of a child or knowing that a child is present and may see or hear an act of domestic assault or battery. For purposes of this section, "child" means a person under sixteen (16) years of age.*

Any person who pleads guilty or is found guilty of a violation of this section shall undergo, at the person's own expense, an evaluation by a person, agency or organization approved by the court to determine whether the defendant should be required to obtain aggression counseling or other appropriate treatment. Such evaluation shall be completed prior to the sentencing date if the court's list of approved evaluators contains evaluators who are able to perform the evaluation prior to the sentencing dates. If the evaluation recommends counseling or other treatment, the evaluation shall recommend the type of counseling or treatment considered appropriate for the defendant, together with the estimated costs thereof, and shall recommend any other suitable alternative counseling or treatment programs, together with the estimated costs thereof. The defendant shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration in determining an appropriate sentence. If a copy of the completed evaluation has not been provided to the court, the court may proceed to sentence the defendant; however, in such event, it shall be presumed that counseling is required unless the defendant makes a showing by a preponderance of evidence that counseling is not

required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the court, the court may consider the failure of the defendant to provide the report as an aggravating circumstance in determining an appropriate sentence. If counseling or other treatment is ordered, in no event shall the person, agency or organization doing the evaluation be the person, agency or organization that provides the counseling or other treatment unless this requirement is waived by the sentencing court, with the exception of federally recognized Indian tribes or federal military installations, where diagnosis and treatment are appropriate and available. Nothing herein contained shall preclude the use of funds authorized for court-ordered counseling or treatment pursuant to this section for indigent defendants as provided by law. In the event that funding is provided for or on behalf of the defendant by a governmental entity, the defendant shall be ordered to make restitution to such governmental entity in accordance with the restitution procedure for crime victims, as specified under chapter 53, title 19, Idaho Code.

- If the evaluation recommends counseling or other treatment, the court shall order the person to complete the counseling or other treatment in addition to any other sentence which may be imposed. If the court determines that counseling or treatment would be inappropriate or undesirable, the court shall enter findings articulating the reasons for such determination on the record. The court shall order the defendant to complete the preferred counseling or treatment program set forth in the evaluation, or a comparable alternative, unless it appears that the defendant cannot reasonably obtain adequate financial resources for such counseling or treatment. In that event, the court may order the defendant to complete a less costly alternative set forth in the evaluation or a comparable program. Nothing contained in this subsection shall be construed as requiring a court to order that counseling or treatment be provided at government expense unless otherwise required by law.
- Each judicial district shall by rule establish a uniform system for the qualification and approval of persons, agencies or organizations to perform the evaluations required in this subsection. Only qualified evaluators approved by the court shall be authorized to perform such evaluations. Funds to establish a system for approval of evaluators shall be derived from moneys designated therefor and deposited in the district court fund as provided in section 31-3201A(p), Idaho Code.
- Counseling or treatment ordered pursuant to this section shall be conducted according to standards established or approved by the Idaho council on domestic violence.

ILLINOIS

720 Ill. Comp. Stat. Ann. 5/12-3.2 (West, WESTLAW through 2001 Reg. Sess.)

A person commits domestic battery if he intentionally or knowingly without legal justification by any means:

- Causes bodily harm to any family or household member as defined in subsection (3) of Section 112A-3 of the Code of Criminal Procedure of 1963;
- Makes physical contact of an insulting or provoking nature with any family or household member as defined in subsection (3) of Section 112A-3 of the Code of Criminal Procedure of 1963.

Sentence. Domestic battery is a Class A Misdemeanor. Domestic battery is a Class 4 felony if the defendant has any prior conviction under this Code for domestic battery (Section 12-3.2) or violation of an order of protection (Section 12-30). Domestic battery is a Class 4 felony if the defendant has any prior conviction under this Code for aggravated battery (Section 12-4), stalking (Section 12-7.3), aggravated stalking (Section 12-7.4), unlawful restraint (Section 10-3), or aggravated unlawful restraint (Section 10-3.1), when any of these offenses have been committed against a family or household member as defined in Section 112A-3 of the Code of Criminal Procedure of 1963. In addition to any other sentencing alternatives, for any second conviction of violating this Section within 5 years of a previous conviction for violating this Section, the offender shall be mandatorily sentenced to a minimum of 48 consecutive hours of imprisonment. The imprisonment shall not be subject to suspension, nor shall the person be eligible for probation in order to reduce the sentence.

Domestic battery committed in the presence of a child. In addition to any other sentencing alternatives, a defendant who commits, in the presence of a child, a felony domestic battery, aggravated domestic battery, aggravated battery, unlawful restraint, or aggravated unlawful restraint against a family or household member, as defined in Section 112A-3 of the Code of Criminal Procedure of 1963, shall be required to serve a mandatory minimum imprisonment of 10 days or perform 300 hours of community service, or both. The defendant shall further be liable for the cost of any counseling required for the child at the discretion of the court in accordance with subsection b of Section 5-5-6 of the Unified Code of corrections.

"Child" means a person under 16 years of age who is the defendant's or victim's child or step-child or who is a minor child residing within the household of the defendant or victim.

"In the presence of a child" means in the physical presence of a child or knowing or having reason to know that a child is present and may see or hear an act constituting one of the offenses listed in this subsection.

INDIANA

Ind. Code Ann. § 31-14-14-5 (West, WESTLAW through Ind. 2002 Legis. Serv., P.L. 133-2002)

This section applies if a court finds that a noncustodial parent has been convicted of a *crime involving domestic or family violence that was witnessed or heard by the noncustodial parent's child*.

There is created a rebuttable presumption that the court shall order that the noncustodial parent's visitation with the child must be supervised:

- For at least one (1) year and not more than two (2) years immediately following the crime involving domestic or family violence; or
- Until the child becomes emancipated; whichever occurs first.

MINNESOTA

Minn. Stat. Ann. § 626.5552 (West, WESTLAW through 2000 Reg. Sess.)⁴³

A child is considered to have been exposed to domestic violence when:

- A parent or other person responsible for the care of the child engages in violent behavior that imminently or seriously endangers the child's physical or mental health;
- A parent or other person responsible for the care of the child engages in repeated domestic assault that would constitute a violation of section 609.2242, subdivision 2 or 4;
- *The child has witnessed repeated incidents of domestic violence as defined in section 518B.01; or*
- A parent or other person responsible for the care of the child engages in chronic and severe use of alcohol or a controlled substance that adversely affects the child's basic needs and safety.

In determining the protective action to take and the services to be offered to the child and family when a child has been exposed to domestic violence, the local welfare agency shall take into account the presence of protective factors in the child's environment. These factors include, but are not limited to:

- Whether the child is or has been the victim of physical abuse, sexual abuse, or neglect as defined in section 626.556, subdivision 2;
- The age of the child;
- The length of time since an incident of being exposed to domestic violence;
- The child's relationship to the parent and the perpetrator of domestic violence; and
- Whether steps are or have been taken to exclude the abuser from the home of the child or the adult victim sought protective services such as shelters, counseling, or advocacy services, legal recourse, or other remedies.

MISSISSIPPI

Miss. Code Ann. § 97-3-7(3)-(4) (West, WESTLAW through Miss. 2002 Legis. Serv., Ch. 353)

A person is guilty of simple domestic assault who commits simple assault as described in § 97-3-7(1) against a family or household member who resides with the defendant or who formerly resided with the defendant, a current or former spouse, a person who has a current dating relationship with the defendant, or a person with whom the defendant has had a biological or legally adopted child and upon conviction, the defendant shall be punished as provided in § 97-3-7(1); provided, that upon a third or subsequent conviction of simple domestic violence, whether against the same or another victim and within 5 years, the defendant shall be guilty of a felony and sentenced to a term of imprisonment not less than 5 years nor more than 10 years. *In*

⁴³ Effective 7/01/01, if funding is authorized for implementation.

sentencing, the court shall consider as an aggravating factor whether the crime was committed in the physical presence or hearing of a child under 16 years of age who was, at the time of the offense, living within either the residence of the victim, the residence of the perpetrator, or the residence where the offense occurred.

A person is guilty of aggravated domestic violence who commits aggravated assault as described in § 97-3-7(2) against a family or household member who resides with the defendant or who formerly resided with the defendant, or a current or former spouse, a person who has a current dating relationship with the defendant, or a person with whom the defendant has had a biological or legally adopted child and upon conviction, the defendant shall be punished as provided under § 97-3-7(2); provided that upon a third or subsequent offense of aggravated domestic violence, whether against the same or another victim and within 5 years, the defendant shall be guilty of a felony and sentenced to a term of imprisonment of not less than 5 nor more than 20 years. *In sentencing, the court shall consider as an aggravating factor whether the crime was committed in the physical presence or hearing of a child under 16 years of age who was, at the time of the offense, living within either the residence of the victim, the residence of the perpetrator, of the residence where the offense occurred.*

MONTANA

Mont. Code Ann. § 45-5-206(1), (2), (3)(a) (WESTLAW through 2001 Reg. Sess.)

A person commits the offense of partner or family member assault if the person:

- Purposely or knowingly causes bodily injury to a partner or family member;
- Negligently causes bodily injury to a partner or family member with a weapon; or
- Purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

For purposes of Title 40, chapter 18, 45-5-231 through 45-5-234, 46-6-311, and this section, the following definitions apply:

- “Family member: means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household;
- “Partners” means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

An offender convicted of partner or family member assault shall be fined an amount not less than \$100 or more than \$ 1,000 and be imprisoned in the county jail for a term not to exceed 1 years or not less than 24 hours for a first offense.

An offender convicted of a second offense under this section shall be fined not less than \$300 or more than \$1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year.

Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in § 46-23-1005.

On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than \$500 and not more than \$50,000 and be imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the State prison.

If the offense was committed within the vision or hearing of a minor, the judge shall consider the minor's presence as a factor at the time of sentencing.

OHIO

Ohio Rev. Code Ann. § 2929.01(MM), (NN) (West, WESTLAW through Ohio 2002 Legis. Serv., File 121)

An offense is "*committed in the vicinity of a child*" if the offender commits the offense within thirty feet of or within the same residential unit as a child who is under eighteen years of age, regardless of whether the offender knows the age of the child or whether the offender knows the offense is being committed within thirty feet of or within the same residential unit as the child and regardless of whether the child actually views the commission of the offense.

Family or household member has the same meaning as in section 2919.25 of the Revised Code.

Ohio Rev. Code Ann. § 2929.12 (West, WESTLAW through Ohio 2002 Legis. Serv., File 121)

Unless otherwise required by section 2929.13⁴⁴ or 2929.14⁴⁵ of the Revised Code, a court that imposes a sentence under this chapter upon an offender for a felony has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11⁴⁶ of the Revised Code. In exercising that discretion, the court shall consider the factors set forth below relating to the seriousness of the conduct and the factors relating to the likelihood of the offender's recidivism and, in addition, may consider any other factors that are relevant to achieving those purposes and principles of sentencing.

The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is more serious than conduct normally constituting the offense:

⁴⁴ Sentencing guidelines for various specific offenses and degrees of offenses

⁴⁵ Prison terms

⁴⁶ Overriding purposes of felony sentencing

- The physical or mental injury suffered by the victim of the offense due to the conduct of the offender was exacerbated because of the physical or mental condition or age of the victim;
- The victim of the offense suffered serious physical, psychological, or economic harm as a result of the offense;
- The offender held a public office or position of trust in the community, and the offense related to that office or position;
- The offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice;
- The offender's professional reputation or occupation, elected office, or profession was used to facilitate the offense or is likely to influence the future conduct of others;
- The offender's relationship with the victim facilitated the offense;
- The offender committed the offense for hire or as a part of an organized criminal activity;
- In committing the offense, the offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion;
- *If the offense is a violation of section 2919.25⁴⁷ or a violation of section 2903.11⁴⁸, 2903.12⁴⁹, or 2903.13⁵⁰ of the Revised Code involving a person who was a family or household member at the time of the violation, the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children.*

The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is less serious than conduct normally constituting the offense:

- The victim induced or facilitated the offense;
- In committing the offense, the offender acted under strong provocation;
- In committing the offense, the offender did not cause or expect to cause physical harm to any person or property;
- There are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense.

The sentencing court shall consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is likely to commit future crimes:

- At the time of committing the offense, the offender was under release from confinement before trial or sentencing, under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or under post-release control pursuant to section 2967.28 or any other provision of the Revised Code for an earlier offense or had been unfavorably terminated from post-release control for a prior offense pursuant to division (B) of section 2929.16 or section 2929.141 of the Revised Code;

⁴⁷ Domestic violence

⁴⁸ Felonious assault

⁴⁹ Aggravated assault

⁵⁰ Assault

- The offender previously was adjudicated a delinquent child pursuant to Chapter 2151 of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152 of the Revised Code, or the offender has a history of criminal convictions;
- The offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child pursuant to Chapter 2151 of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152 of the Revised Code, or the offender has not responded favorably to sanctions previously imposed for criminal convictions;
- The offender has demonstrated a pattern of drug or alcohol abuse that is related to the offense, and the offender refuses to acknowledge that the offender has demonstrated that pattern, or the offender refuses treatment for the drug or alcohol abuse;
- The offender shows no genuine remorse for the offense.

The sentencing court shall consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is not likely to commit future crimes:

- Prior to committing the offense, the offender had not been adjudicated a delinquent child;
- Prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal offense;
- Prior to committing the offense, the offender had led a law-abiding life for a significant number of years;
- The offense was committed under circumstances not likely to recur;
- The offender shows genuine remorse for the offense.

Ohio Rev. Code Ann. § 2929.17 (West, WESTLAW through 2000 Files 124, 128, 129, 131 to 133, & 135 to 248)

The court imposing a sentence for a felony upon an offender who is not required to serve a mandatory prison term may impose any nonresidential sanction or combination of nonresidential sanctions authorized under this section. If the court imposes one or more nonresidential sanctions authorized under this section, the court shall impose as a condition of the sanction that, during the period of the nonresidential sanction, the offender shall abide by the law and shall not leave the state without the permission of the court or the offender's probation officer.

The court imposing a sentence for a fourth degree felony OMVI offense under division (G)(1) of section 2929.13 of the Revised Code may impose upon the offender, in addition to the mandatory term of local incarceration imposed under that division, a nonresidential sanction or combination of nonresidential sanctions under this section, and the offender shall serve or satisfy the sanction or combination of sanctions after the offender has served the mandatory term of local incarceration required for the offense. Nonresidential sanctions include, but are not limited to, the following:

- A term of day reporting;
- A term of electronically monitored house arrest, a term of electronic monitoring without house arrest, or a term of house arrest without electronic monitoring;
- A term of community service of up to five hundred hours pursuant to division (F) of section 2951.02 of the Revised Code or, if the court determines that the offender is

financially incapable of fulfilling a financial sanction described in section 2929.18 of the Revised Code, a term of community service as an alternative to a financial sanction;

- A term in a drug treatment program with a level of security for the offender as determined necessary by the court;
- A term of intensive probation supervision;
- A term of basic probation supervision;
- A term of monitored time;
- A term of drug and alcohol use monitoring, including random drug testing pursuant to section 2951.05 of the Revised Code;
- A curfew term;
- A requirement that the offender obtain employment;
- A requirement that the offender obtain education or training;
- Provided the court obtains the prior approval of the victim, a requirement that the offender participate in victim-offender mediation;
- A license violation report;
- *If the offense is a violation of section 2919.25⁵¹ or a violation of section 2903.11⁵², 2903.12⁵³, or 2903.13⁵⁴ of the Revised Code involving a person who was a family or household member at the time of the violation, if the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and if the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children, a requirement that the offender obtain counseling. This division does not limit the court in requiring the offender to obtain counseling for any offense or in any circumstance not specified in this division.*

Ohio Rev. Code Ann. § 2929.22 (West, WESTLAW through 2000 Files 124, 128, 129, 131 to 133, & 135 to 248)

In determining whether to impose imprisonment or a fine, or both, for a misdemeanor, and in determining the term of imprisonment and the amount and method of payment of a fine for a misdemeanor, the court shall consider the risk that the offender will commit another offense and the need for protecting the public from the risk; the nature and circumstances of the offense; the history, character, and condition of the offender and the offender's need for correctional or rehabilitative treatment; any statement made by the victim under sections 2930.12 to 2930.17⁵⁵ of the Revised Code, if the offense is a misdemeanor specified in division (A) of section 2930.01⁵⁶ of the Revised Code; and the ability and resources of the offender and the nature of the burden that payment of a fine will impose on the offender.

The following do not control the court's discretion but shall be considered in favor of imposing imprisonment for a misdemeanor:

- The offender is a repeat or dangerous offender;
- Regardless of whether or not the offender knew the age of the victim, the victim of the offense was sixty-five years of age or older, permanently and totally disabled, or less than

⁵¹ Domestic violence

⁵² Felonious assault

⁵³ Aggravated assault

⁵⁴ Assault

⁵⁵ Rights of victims of crimes

⁵⁶ Defines crime

eighteen years of age at the time of the commission of the offense;

- *The offense is a violation of section 2919.25⁵⁷ or a violation of section 2903.13⁵⁸ of the Revised Code involving a person who was a family or household member at the time of the violation, the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children.*

If the offense is a violation of section 2919.25 or a violation of section 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation and the court decides to impose a term of imprisonment upon the offender, the factor listed above shall be considered in favor of imposing a longer term of imprisonment on the offender.

The criteria listed in section 2929.12⁵⁹ of the Revised Code that mitigate the seriousness of the offense and that indicate that the offender is unlikely to commit future crimes do not control the court's discretion but shall be considered against imposing imprisonment for a misdemeanor.

The criteria listed above shall not be construed to limit the matters that may be considered in determining whether to impose imprisonment for a misdemeanor.

The court shall not impose a fine in addition to imprisonment for a misdemeanor unless a fine is specially adapted to deterrence of the offense or the correction of the offender, the offense has proximately resulted in physical harm to the person or property of another, or the offense was committed for hire or for purpose of gain.

The court shall not impose a fine or fines that, in the aggregate and to the extent not suspended by the court, exceed the amount that the offender is or will be able to pay by the method and within the time allowed without undue hardship to the offender or the offender's dependents, or will prevent the offender from making restitution or reparation to the victim of the offender's offense.

At the time of sentencing or as soon as possible after sentencing, the court shall notify the victim of the offense of the victim's right to file an application for an award of reparations pursuant to sections 2743.51 to 2743.72 of the Revised Code.

"Repeat offender" and "dangerous offender" have the same meanings as in section 2935.36 of the Revised Code.

OKLAHOMA

Okla. Stat. Ann. tit. 21, § 644 (West, WESTLAW through 2000 1st Ex. Sess.)

Assault shall be punishable by imprisonment in a county jail not exceeding 30 days, or by a fine of not more than Five Hundred Dollars, or both such fine and imprisonment.

⁵⁷ Domestic violence

⁵⁸ Assault

⁵⁹ Factors to consider in felony sentencing

Assault and battery shall be punishable by imprisonment in a county jail not exceeding 90 days, or by a fine of not more than One Thousand Dollars, or by both such imprisonment and fine. Any person who commits any assault and battery against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant shall be guilty of domestic abuse. Upon conviction, the defendant shall be punished by imprisonment in the county jail not exceeding one (1) year, or by a fine of not more than Three Thousand Dollars (\$3,000.00), or by both such fine and imprisonment. *Any person convicted of domestic abuse as defined in this subsection that was committed in the presence of a child shall be sentenced to not less than six (6) months.* Any second or subsequent conviction of domestic abuse shall be a felony. *Any person convicted of a second or subsequent domestic abuse as defined in this subsection that was committed in the presence of a child shall be sentenced to not less than one (1) year.* The fine for a felony violation of this subsection shall not be more than Five Thousand Dollars (\$5,000.00). Every conviction of domestic abuse shall require as a condition of a suspended sentence that the defendant participate in counseling or treatment to bring about the cessation of domestic abuse. The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court.

"In the presence of a child" means in the physical presence of a child; or having knowledge that a child is present and may see or hear an act of domestic violence.

Any conviction for assault and battery against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or any person living in the same household as the defendant, shall constitute a sufficient basis for a felony charge:

- If that conviction is rendered in any state, county or parish court of record of this or any other state; or
- If that conviction is rendered in any municipal court of record of this or any other state for which any jail time was served; provided, no conviction in a municipal court of record entered prior to November 1, 1997, shall constitute a prior conviction for purposes of a felony charge.

OREGON

Or. Rev. Stat. § 163.160 (WESTLAW through 1999 Reg. Sess.)

A person commits the crime of assault in the fourth degree if the person:

- Intentionally, knowingly or recklessly causes physical injury to another; or
- With criminal negligence causes physical injury to another by means of a deadly weapon.

Assault in the fourth degree is a Class A misdemeanor.

Notwithstanding the above subsection, assault in the fourth degree is a Class C felony if the person commits the crime of assault in the fourth degree and:

- The person has previously been convicted of assaulting the same victim;
- The person has previously been convicted at least three times under this section or under equivalent laws of another jurisdiction and all of the assaults involved domestic violence, as defined in ORS 135.230; or
- *The assault is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or victim.*

An assault is witnessed if the assault is seen or directly perceived in any other manner by the child.

UTAH

Utah Code § 76-5-109.1 (1), (2) (Lexis, WESTLAW through Utah 2002 Legis. Serv., Ch. 81)

“Cohabitant “ has the same meaning as defined in section 30-6-1.

"Domestic violence" has the same meaning as in section 77-36-1.

"In the presence of a child" means:

- In the physical presence of a child; or
- Having knowledge that a child is present and may see or hear an act of domestic violence.

A person is guilty of child abuse if the person:

- *Commits or attempts to commit criminal homicide, as defined in section 76-5-201, against a cohabitant in the presence of a child; or*
- *Intentionally causes serious bodily injury to a cohabitant or uses a dangerous weapon, as defined in section 76-1-601, or other means or force likely to produce death or serious bodily injury against a cohabitant, in the presence of a child; or*
- *Under circumstances not amounting to a violation of the above subsections, commits an act of domestic violence in the presence of a child.*

A charge under this section is separate from and distinct from, and is in addition to, a charge of domestic violence where the victim is the cohabitant. Either or both charges may be filed by the prosecutor.

WASHINGTON

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Wash. Rev. Code Ann. § 9.94A.535 (West, WESTLAW through Wash. 2002 Legis. Serv., Ch. 169)

The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.210(4). A departure from the standards in RCW 9.94A.400 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.210 (2) through (6).

The following are illustrative factors which the court may consider in the exercise of its discretion to impose an exceptional sentence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

Mitigating Circumstances

- To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident;
- Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained;
- The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct;
- The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime;
- The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded;
- The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim;
- The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010;

- The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

Aggravating Circumstances

- The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim;
- The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health;
- The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant;
- The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:
 - (i) The current offense involved multiple victims or multiple incidents per victim;
 - (ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;
 - (iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or
 - (iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense;
- The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:
 - (i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;
 - (ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;
 - (iii) The current offense involved the manufacture of controlled substances for use by other parties;
 - (iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;
 - (v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or
 - (vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional);
- The current offense included a finding of sexual motivation pursuant to RCW 9.94A.127;
- The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time;
- *The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:*
 - (i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;

- (ii) *The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or*
- (iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim;
- The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010;
- The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010;
- The offense resulted in the pregnancy of a child victim of rape;
- The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization;
- The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.